

SENATE BILL 76

By Overbey

AN ACT to amend Tennessee Code Annotated, Title 8,
relative to notaries public.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated Title 8, Chapter 16, is amended by adding the following as a new part 5:

8-16-501. This act shall be known and may be cited as the “Revised Uniform Law on Notarial Acts.”

8-16-502. As used in this act, unless the context otherwise requires:

(1) “Acknowledgment” means a declaration by an individual before a notarial officer that the individual has signed a record for the purpose stated in the record and, if the record is signed in a representative capacity, that the individual signed the record with proper authority and signed it as the act of the individual or entity identified in the record;

(2) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities;

(3) “Electronic signature” means an electronic symbol, sound or process attached to or logically associated with a record and executed or adopted by an individual with the intent to sign the record;

(4) “In a representative capacity” means acting as:

(A) An authorized officer, agent, partner, trustee or other representative for a person other than an individual;

(B) A public officer, personal representative, guardian or other representative, in the capacity stated in a record;

(C) An agent or attorney-in-fact for a principal; or

(D) An authorized representative of another in any other capacity;

(5) "Notarial act" means an act, whether performed with respect to a tangible or electronic record, that a notarial officer may perform under the law of this state. The term includes taking an acknowledgment, administering an oath or affirmation, taking a verification on oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy and noting a protest of a negotiable instrument;

(6) "Notarial officer" means a notary public or other individual authorized to perform a notarial act;

(7) "Notary public" means an individual commissioned to perform a notarial act under part 1;

(8) "Official stamp" means a physical image affixed to or embossed on a tangible record or an electronic image attached to or logically associated with an electronic record;

(9) "Person" means an individual, corporation, business trust, statutory trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality or any other legal or commercial entity;

(10) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(11) "Sign" means, with present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To attach to or logically associate with the record an electronic symbol, sound or process;

(12) "Signature" means a tangible symbol or an electronic signature that evidences the signing of a record;

(13) "Stamping device" means:

(A) A physical device capable of affixing to or embossing on a tangible record an official stamp; or

(B) An electronic device or process capable of attaching to or logically associating with an electronic record an official stamp;

(14) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States; and

(15) "Verification on oath or affirmation" means a declaration, made by an individual on oath or affirmation before a notarial officer, that a statement in a record is true.

8-16-503. This act applies to a notarial act performed on or after January 1, 2012.

8-16-504.

(a) A notarial officer may perform a notarial act authorized by this act or by law of this state other than this act.

(b) A notarial officer may not perform a notarial act with respect to a record to which the officer or the officer's spouse is a party or in which either of them has a direct beneficial interest. A notarial act performed in violation of this subsection is voidable.

8-16-505.

(a) A notarial officer who takes an acknowledgment of a record shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the officer and making the acknowledgment has the identity claimed and that the signature on the record is the signature of the individual.

(b) A notarial officer who takes a verification of a statement on oath or affirmation shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the officer and making the verification has the identity claimed and that the signature on the statement verified is the signature of the individual.

(c) A notarial officer who witnesses or attests to a signature shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the officer and signing the record has the identity claimed.

(d) A notarial officer who certifies or attests a copy of a record or an item that was copied shall determine that the copy is a full, true and accurate transcription or reproduction of the record or item.

(e) A notarial officer who makes or notes a protest of a negotiable instrument shall determine the matters set forth in § 47-3-505(b).

8-16-506. If a notarial act relates to a statement made in or a signature executed on a record, the individual making the statement or executing the signature shall appear personally before the notarial officer.

8-16-507.

(a) A notarial officer has personal knowledge of the identity of an individual appearing before the officer if the individual is personally known to the officer through dealings sufficient to provide reasonable certainty that the individual has the identity claimed.

(b) A notarial officer has satisfactory evidence of the identity of an individual appearing before the officer if the officer can identify the individual:

(1) By means of:

(A) A passport, driver license, or government issued nondriver identification card which is current or expired not more than three (3) years before performance of the notarial act; or

(B) Another form of government identification issued to an individual which is current or expired not more than three (3) years before performance of the notarial act, contains the signature or a photograph of the individual and is satisfactory to the officer; or

(2) By a verification on oath or affirmation of a credible witness personally appearing before the officer and known to the officer or whom the officer can identify on the basis of a passport, driver license, or government issued nondriver identification card that is current or expired not more than three (3) years before performance of the notarial act.

(c) A notarial officer may require an individual to provide additional information or identification credentials necessary to assure the officer of the identity of the individual.

8-16-508.

(a) A notarial officer may refuse to perform a notarial act if the officer is not satisfied that:

(1) The individual executing the record is competent or has the capacity to execute the record; or

(2) The individual's signature is knowingly and voluntarily made.

(b) A notarial officer may refuse to perform a notarial act unless refusal is prohibited by law other than this act.

8-16-509. If an individual is physically unable to sign a record, the individual may direct an individual other than the notarial officer to sign the individual's name on the record. The

notarial officer shall insert "Signature affixed by (name of other individual) at the direction of (name of individual)" or words of similar import.

8-16-510.

(a) A notarial act may be performed in this state by:

(1) A notary public of this state; or

(2) Any other individual authorized to perform the specific act by the law of this state.

(b) The signature and title of an individual performing a notarial act in this state are prima facie evidence that the signature is genuine and that the individual holds the designated title.

(c) The signature and title of a notarial officer described in subdivision (a)(1) conclusively establish the authority of the officer to perform the notarial act.

8-16-511.

(a) A notarial act performed in another state has the same effect under the law of this state as if performed by a notarial officer of this state if the act performed in that state is performed by:

(1) A notary public of that state;

(2) A judge, clerk or deputy clerk of a court of that state; or

(3) Any other individual authorized by the law of that state to perform the notarial act.

(b) The signature and title of an individual performing a notarial act in another state are prima facie evidence that the signature is genuine and that the individual holds the designated title.

(c) The signature and title of a notarial officer described in subsection (a)(1) or (2) conclusively establish the authority of the officer to perform the notarial act.

8-16-512.

(a) A notarial act performed under the authority and in the jurisdiction of a federally recognized Indian tribe has the same effect as if performed by a notarial officer of this state if the act performed in the jurisdiction of the tribe is performed by:

- (1) A notary public of the tribe;
- (2) A judge, clerk or deputy clerk of a court of the tribe; or
- (3) Any other individual authorized by the law of the tribe to perform the notarial act.

(b) The signature and title of an individual performing a notarial act under the authority of and in the jurisdiction of a federally recognized Indian tribe are prima facie evidence that the signature is genuine and that the individual holds the designated title.

(c) The signature and title of a notarial officer described in subdivision (a)(1) or (2) conclusively establish the authority of the officer to perform the notarial act.

8-16-513.

(a) A notarial act performed under federal law has the same effect under the law of this state as if performed by a notarial officer of this state if the act performed under federal law is performed by:

- (1) A judge, clerk, or deputy clerk of a court;
- (2) An individual in military service or performing duties under the authority of military service who is authorized to perform notarial acts under federal law;
- (3) An individual designated a notarizing officer by the United States department of state for performing notarial acts overseas; or
- (4) Any other individual authorized by federal law to perform the notarial act.

(b) The signature and title of an individual acting under federal authority and performing a notarial act are prima facie evidence that the signature is genuine and that the individual holds the designated title.

(c) The signature and title of an officer described in subdivision (a)(1), (2), or (3) conclusively establish the authority of the officer to perform the notarial act.

8-16-514.

(a) In this section, "foreign state" means a government other than the United States, a state or a federally recognized Indian tribe.

(b) If a notarial act is performed under authority and in the jurisdiction of a foreign state or constituent unit of the foreign state or is performed under the authority of a multinational or international governmental organization, the act has the same effect under the law of this state as if performed by a notarial officer of this state.

(c) If the title of office and indication of authority to perform notarial acts in a foreign state appears in a digest of foreign law or in a list customarily used as a source for that information, the authority of an officer with that title to perform notarial acts is conclusively established.

(d) The signature and official stamp of an individual holding an office described in subsection (c) are prima facie evidence that the signature is genuine and the individual holds the designated title.

(e) An apostille in the form prescribed by the Hague Convention of October 5, 1961, and issued by a foreign state party to the Convention conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office.

(f) A consular authentication issued by an individual designated by the United States department of state as a notarizing officer for performing notarial acts overseas

and attached to the record with respect to which the notarial act is performed conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office.

8-16-515.

(a) A notarial act shall be evidenced by a certificate. The certificate shall:

(1) Be executed contemporaneously with the performance of the notarial act;

(2) Be signed and dated by the notarial officer and, if the notarial officer is a notary public, be signed in the same manner as on file under part 1;

(3) Identify the jurisdiction in which the notarial act is performed;

(4) Contain the title of office of the notarial officer; and

(5) If the notarial officer is a notary public, indicate the date of expiration, if any, of the officer's commission.

(b) If a notarial act regarding a tangible record is performed by a notary public, an official stamp must be affixed to or embossed on the certificate. If a notarial act is performed regarding a tangible record by a notarial officer other than a notary public and the certificate contains the information specified in subdivision (a)(2), (3) and (4), an official stamp may be affixed to or embossed on the certificate. If a notarial act regarding an electronic record is performed by a notarial officer and the certificate contains the information specified in subdivision (a)(2), (3) and (4), an official stamp may be attached to or logically associated with the certificate.

(c) A certificate of a notarial act is sufficient if it meets the requirements of subsections (a) and (b) and:

(1) Is in a short form set forth in § 8-16-516;

(2) Is in a form otherwise permitted by the law of this state;

(3) Is in a form permitted by the law applicable in the jurisdiction in which the notarial act was performed; or

(4) Sets forth the actions of the notarial officer and the actions are sufficient to meet the requirements of the notarial act as provided in § 8-16-505, § 8-16-506 and § 8-16-507 or law of this state other than this act.

(d) By executing a certificate of a notarial act, a notarial officer certifies that the officer has complied with the requirements and made the determinations specified in § 8-16-504, § 8-16-505 and § 8-16-506.

(e) A notarial officer may not affix the officer's signature to, or logically associate it with, a certificate until the notarial act has been performed.

(f) If a notarial act is performed regarding a tangible record, a certificate shall be part of, or securely attached to, the record. If a notarial act is performed regarding an electronic record, the certificate shall be affixed to, or logically associated with, the electronic record. If the governor has established standards pursuant to § 8-16-525 for attaching, affixing, or logically associating the certificate, the process shall conform to the standards.

8-16-516. The following short form certificates of notarial acts are sufficient for the purposes indicated, if completed with the information required by § 8-16-515(a) and (b):

(1) For an acknowledgment in an individual capacity:

State of _____

County of _____

This record was acknowledged before me on _____ by _____
Date Name(s) of individual(s)

Signature of notarial officer

Stamp

Title of office

My commission expires: _____

(2) For an acknowledgment in a representative capacity:

State of _____

County of _____

This record was acknowledged before me on _____ by _____
Date Name(s) of individual(s)

as (type of authority, such as officer or trustee) of (name of party on behalf of whom record was executed).

Signature of notarial officer

Stamp

Title of office

My commission expires: _____

(3) For a verification on oath or affirmation:

State of _____

County of _____

Signed and sworn to (or affirmed) before me on _____ by _____
Date Name(s) of individual(s)
making statement

Signature of notarial officer

Stamp

Title of office _____
My commission expires: _____

(4) For witnessing or attesting a signature:

State of _____

County of _____

Signed [or attested] before me on _____ by _____
Date Name(s) of individual(s)

Signature of notarial officer

Stamp

Title of office

My commission expires: _____

(5) For certifying a copy of a record:

State of _____

County of _____

I certify that this is a true and correct copy of a record in the possession
of _____.

Dated _____

Signature of notarial officer

Stamp

Title of office

My commission expires: _____

8-16-517. The official stamp of a notary public shall:

(1) Include the notary public's name, jurisdiction, commission expiration date and other information required by the governor in addition to complying with § 8-16-114; and

(2) Be capable of being copied together with the record to which it is affixed or attached or with which it is logically associated.

8-16-518.

(a) A notary public is responsible for the security of the notary public's stamping device and may not allow another individual to use the device to perform a notarial act.

(b) If a notary public's stamping device is lost or stolen, the notary public or the notary public's personal representative or guardian shall notify promptly the commissioning officer or agency on discovering that the device is lost or stolen.

8-16-519.

(a) A notary public may select one or more tamper-evident technologies to perform notarial acts with respect to electronic records. A person may not require a notary public to perform a notarial act with respect to an electronic record with a technology that the notary public has not selected.

(b) Before a notary public performs the notary public's initial notarial act with respect to an electronic record, a notary public shall notify the governor that the notary public will be performing notarial acts with respect to electronic records and identify the technology the notary public intends to use. If the governor has established standards for approval of technology pursuant to § 8-16-525, the technology shall conform to the standards. If the technology conforms to the standards, the governor shall approve the use of the technology.

8-16-520.

(a) An individual qualified under subsection (b) may apply to the governor for a commission as a notary public. The applicant shall comply with and provide the information required by rules established by the governor and pay any application fee.

(b) An applicant for a commission as a notary public shall:

- (1) Be at least eighteen (18) years of age;
- (2) Be a citizen or permanent legal resident of the United States;
- (3) Be a resident of or have a place of employment or practice in this state;
- (4) Be able to read and write English; and
- (5) Not be disqualified to receive a commission under § 8-16-521.

(c) Before issuance of a commission as a notary public, an applicant for the commission shall execute an oath of office and submit it in accordance with part 1.

(d) Before issuance of a commission as a notary public, the applicant for a commission shall submit in accordance with part 1 an assurance in the form of a surety bond or its functional equivalent in the amount of ten thousand dollars (\$10,000). The assurance shall be issued by a surety or other entity licensed or authorized to do business in this state. The assurance must cover acts performed during the term of the notary public's commission and shall be in the form prescribed by the governor. If a notary public violates law with respect to notaries public in this state, the surety or issuing entity is liable under the assurance. The surety or issuing entity shall give thirty (30) days notice to the county clerk in the county where elected before canceling the assurance. The surety or issuing entity shall notify the county clerk in the county where elected not later than thirty (30) days after making a payment to a claimant under the assurance. A notary public may perform notarial acts in this state only during the period that a valid assurance is on file with the county clerk in the county where elected.

(e) On compliance with this section, the governor shall issue a commission as a notary public to an applicant for a term of four (4) years.

(f) A commission to act as a notary public authorizes the notary public to perform notarial acts. The commission does not provide the notary public any immunity or benefit conferred by law of this state on public officials or employees.

8-16-521.

(a) The governor may deny, refuse to renew, revoke, suspend or impose a condition on a commission as notary public for any act or omission that demonstrates the individual lacks the honesty, integrity, competence or reliability to act as a notary public, including:

(1) Failure to comply with this act;

(2) A fraudulent, dishonest or deceitful misstatement or omission in the application for a commission as a notary public submitted to the governor;

(3) A conviction of the applicant or notary public of any felony or a crime involving fraud, dishonesty or deceit;

(4) A finding against, or admission of liability by, the applicant or notary public in any legal proceeding or disciplinary action based on the applicant or notary public's fraud, dishonesty or deceit;

(5) Failure by the notary public to discharge any duty required of a notary public, whether by this act, rules of the governor or any federal or state law;

(6) Use of false or misleading advertising or representation by the notary public representing that the notary has a duty, right or privilege that the notary does not have;

(7) Violation by the notary public of a rule of the governor regarding a notary public;

(8) Denial, refusal to renew, revocation, suspension or conditioning of a notary public commission in another state; or

(9) Failure of the notary public to maintain an assurance as provided in § 8-16-520.

(b) If the governor denies, refuses to renew, revokes, suspends or imposes conditions on a commission as a notary public, the applicant or notary public is entitled to timely notice and hearing in accordance with title 4, chapter 5.

(c) The authority of the governor to deny, refuse to renew, suspend, revoke or impose conditions on a commission as a notary public does not prevent a person from seeking and obtaining other criminal or civil remedies provided by law.

8-16-522. The governor shall maintain an electronic database of notaries public:

(1) Through which a person may verify the authority of a notary public to perform notarial acts; and

(2) That indicates whether a notary public has notified the governor that the notary public will be performing notarial acts on electronic records.

8-16-523.

(a) A commission as a notary public does not authorize an individual to:

(1) Assist persons in drafting legal records, give legal advice or otherwise practice law;

(2) Act as an immigration consultant or an expert on immigration matters;

(3) Represent a person in a judicial or administrative proceeding relating to immigration to the United States, United States citizenship or related matters;

or

(4) Receive compensation for performing any of the activities listed in this subsection.

(b) A notary public may not engage in false or deceptive advertising.

(c) A notary public, other than an attorney licensed to practice law in this state, may not use the term “notario” or “notario publico”.

(d) A notary public, other than an attorney licensed to practice law in this state, may not advertise or represent that the notary public may assist persons in drafting legal records, give legal advice or otherwise practice law. If a notary public who is not an attorney licensed to practice law in this state in any manner advertises or represents that the notary public offers notarial services, whether orally or in a record, including broadcast media, print media and the Internet, the notary public shall include the following statement, or an alternate statement authorized or required by the governor, in the advertisement or representation, prominently and in each language used in the advertisement or representation: “I am not an attorney licensed to practice law in this state. I am not allowed to draft legal records, give advice on legal matters, including immigration, or charge a fee for those activities.” If the form of advertisement or representation is not broadcast media, print media or the Internet and does not permit inclusion of the statement required by this subsection because of size, it shall be displayed prominently or provided at the place of performance of the notarial act before the notarial act is performed.

(e) Except as otherwise allowed by law, a notary public may not withhold access to or possession of an original record provided by a person that seeks performance of a notarial act by the notary public.

8-16-524. Except as otherwise provided in § 8-16-504(b), the failure of a notarial officer to perform a duty or meet a requirement specified in this act does not invalidate a notarial act performed by the notarial officer. The validity of a notarial act under this act does not prevent an aggrieved person from seeking to invalidate the record or transaction that is the subject of the

notarial act or from seeking other remedies based on law of this state other than this act or law of the United States. This section does not validate a purported notarial act performed by an individual who does not have the authority to perform notarial acts.

8-16-525.

(a) The governor may adopt rules to implement this act. Rules adopted regarding the performance of notarial acts with respect to electronic records may not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification. The rules may:

(1) Prescribe the manner of performing notarial acts regarding tangible and electronic records;

(2) Include provisions to ensure that any change to or tampering with a record bearing a certificate of a notarial act is self-evident;

(3) Include provisions to ensure integrity in the creation, transmittal, storage or authentication of electronic records or signatures;

(4) Prescribe the process of granting, renewing, conditioning, denying, suspending or revoking a notary public commission and assuring the trustworthiness of an individual holding a commission as notary public;

(5) Include provisions to prevent fraud or mistake in the performance of notarial acts; and

(6) Establish the process for approving and accepting surety bonds and other forms of assurance under § 8-16-520(d).

(b) In adopting, amending or repealing rules about notarial acts with respect to electronic records, the governor shall consider, so far as is consistent with this act:

(1) The most recent standards regarding electronic records promulgated by national bodies, such as the National Association of Secretaries of State;

(2) Standards, practices and customs of other jurisdictions that substantially enact this act; and

(3) The views of governmental officials and entities and other interested persons.

8-16-526. A commission as a notary public in effect on January 1, 2012 continues until its date of expiration. A notary public who applies to renew a commission as a notary public on or after January 1, 2012 is subject to and shall comply with this act. A notary public, in performing notarial acts after January 1, 2012, shall comply with this act.

8-16-527. This chapter does not affect the validity or effect of a notarial act performed before January 1, 2012.

8-16-528. In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

8-16-529. This act modifies, limits and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., but does not modify, limit or supersede § 101(c) of that act, 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in § 103(b) of that act, 15 U.S.C. § 7003(b).

SECTION 2. Tennessee Code Annotated, Section 8-16-112, is amended by deleting the section in its entirety.

SECTION 3. Tennessee Code Annotated, Section 8-16-401, is amended by deleting the section in its entirety.

SECTION 4. Tennessee Code Annotated, Section 8-16-403, is amended by deleting the language "the foregoing provisions" and by substituting instead the language "§ 8-16-402 or § 8-16-523."

SECTION 5. This act shall take effect January 1, 2012, the public welfare requiring it.